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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, September 16, 1968, at 11:00 a.m.

Senate

FRIDAY, SEPTEMBER 13, 1968

The Senate met at 11 a.m., and was called to order by Hon. PAUL J. FANNIN, a Senator from the State of Arizona.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Eternal God, Father of our spirits, with a faith that will not shrink though pressed by every foe, we would this day climb the altar steps which lead through darkness up to Thee, for our greatest need is of Thee.

In the crises of our times join us with those who, across the waste and wilderness of human hate and need, preparing the way of the Lord, throw up a highway for our God.

God the All-righteous, man hath defied Thee. Yet to eternity standeth Thy word; falsehood and wrong shall not tarry beside Thee. Give to us peace in our time, O Lord, that the sundered family of mankind at last may be bound by golden cords of understanding fellowship around the feet of the one God.

In the dear Redeemer's name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 13, 1968.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. PAUL J. FANNIN, a Senator from the State of Arizona, to perform the duties of the Chair during my absence.

CARL HAYDEN,
President pro tempore.

Mr. FANNIN thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, September 12, 1968, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2515) to authorize the establishment of the Redwood National Park in the State of California, and for other purposes.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, in view of the fact that in the Chamber at this time is the distinguished majority leader of the House, the Honorable CARL ALBERT, and inasmuch as his presence fits in with the business of the Senate, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DEPARTMENT OF JUSTICE

The assistant legislative clerk read the nomination of William J. Holloway, Jr., of Oklahoma, to be U.S. circuit judge, 10th circuit.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

The assistant legislative clerk read the nomination of Lawrence Gubow, of Michigan, to be U.S. district judge for the eastern district of Michigan.

Mr. GRIFFIN. Mr. President, it is a pleasure to indicate my support for the nomination of Mr. Lawrence Gubow of Detroit, Mich., to be U.S. district judge for the eastern district of Michigan.

Mr. Gubow has had a distinguished career as an attorney. Educated at the University of Michigan and its law school, he was admitted to the Michigan bar in 1951. Subsequently, he served as an attorney with the Detroit law firm of Rosin & Kobel.

In 1953, Mr. Gubow joined the Michigan Coporation and Securities Commission and was chosen its commissioner in 1956. He served as commissioner until 1961, when he was appointed U.S. attorney for the eastern district of Michigan, the postion he now holds.

Mr. Gubow serves as president of the Jewish Community Council of Metropolitan Detroit, and he is a leader in the Jewish War Veterans of the U.S.A. and various Michigan veterans groups.

I know Mr. Gubow as an able and highly qualified member of the bar and as a widely respected public servant. He has bipartisan support for his nomination, and I am confident that he will make an outstanding judge.

Mr. President, I am pleased to recommend that the Senate advise and consent to the nomination of Lawrence Gubow.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may proceed for an additional 5 minutes at this time.

The ACTING PRESIDENT pro tempore. without objection, it is so ordered.

THE SITUATION IN CZECHOSLOVAKIA AND U.S. FORCES IN EUROPE

Mr. MANSFIELD. Mr. President, many words have been spoken in the Senate about the Soviet invasion of Czechoslovakia. Many others will be spoken. This action was on outrageous affront to the people of that nation and a grave blow to international stability.

Over half a million troops are reported on the move in Central Europe. Great numbers are involved in occupying a small country against its will. They cast a long shadow over the prospects for a peaceful Europe. They dim the hopes of people everywhere for a more peaceful world.

In these remarks, I will not dwell on the various adverse implications of the recent developments in Czechoslovakia. In due course, a report on that subject will be forthcoming in consequence of a brief visit I made to Eastern Europe during the recent adjournment of the Senate. In these remarks, today, I will touch on only one aspect of the subject—the question of American force reductions in Western Europe, in the aftermath of the Czechoslovakia crisis.

Immediately after the Soviet invasion, I stated that there would be no point in continuing to advocate an immediate reduction in the level of these forces. I made that statement with resignation and sadness.

A reduction would have saved American taxpayers hundreds of millions of dollars, over the next few years. It would have had a significant corrective effect on this Nation's distorted balance of international payments. It would have helped to restore relationships with the countries of Western Europe to a normal basis; the continued presence of hundreds of thousands of American troops, along with a great number of dependents' homesteads on Western European soil, is, per se, an abnormal relationship.

I believe, moreover, that step-by-step reductions of our forces in Europe would have led the Western Europeans to assume a larger share of the burden of their own defense which, in turn, may well have resulted in closer cooperation among them. I believe, too, that it would have contributed to reducing the danger of catastrophic error which necessarily attends the presence of hundreds of thousands of foreign troops confronting hundreds of thousands of other foreign troops across a tense dividing line. Finally, reductions of our forces in Western Europe would have increased the pressures for and may well have brought about reductions of Soviet forces in the Eastern European countries, with or without negotiations to that end.

The Soviet invasion of Czechoslovakia has had the effect of deferring these results. How long they will remain deferred depends, in great part, on the disposition which the Soviet Government and its Warsaw Pact allies, Romania excepted, may make of the occupation forces now in Czechoslovakia.

We can hardly make substantial reductions in U.S. forces in Western Europe while the Soviets have vastly increased their forces in Eastern European countries and have done so, furthermore, in connection with the military steamrollering of the independence of a small country. To be sure, reductions in our forces, even now, would not lessen, in any way, our responsibility under the North Atlantic Treaty to join in the common defense against an attack on Western Europe and the regions covered by the North Atlantic Treaty. Those responsibilities would be met in the event of an attack, not only because they are treaty obligations, but also because they are inescapable responsibilities in terms of our own survival. They would be met whether the U.S. forces which were encamped in Western Europe at the time of an attack numbered one division or 10 divisions.

Nevertheless, a reduction in the U.S. contingents in Europe in present circumstances could be subject to misinterpretation in both West and East, and might conceivably lead to serious miscalculations. That is a risk which, it seems to me, we would be unwarranted in taking at this time, in our interests and in the interests of peace. It was that risk which led me to suggest a temporary deferment of the question.

However, my views on the anachronistic size of the deployment of American forces and dependents in Europe have not changed. Certainly, I do not believe that the number of these Americans should be increased at this time, as some have suggested. Moreover, in my judgment, it remains desirable to undertake a gradual reduction in U.S. forces if and when the situation in Eastern Europe offers reasonable assurance that developments there are not going to spill over into Western Europe. If and when that time comes, I believe a positive plan should be ready to cut American forces in Europe. It should be a plan, phased over several years—perhaps on what might be termed a D plus D basis—that is, the withdrawal of one division of men with their dependents each year. That reduction, in my judgment, should continue until the force levels remaining would be sufficient only to insure that military aggression from any source would enable the United States promptly to set in motion its immense powers for the common defense of the nations of the North Atlantic Pact. In the light of modern military technology, the five or six U.S. divisions which are now stationed in Europe are hardly required for that purpose. In due course, it seems to me that the number could be reduced to one or at most two.

I would like to make it plain that I believe that there has been a dereliction in the failure to have set in motion, heretofore, positive plans to bring about orderly, phased reductions in the European deployment. Indeed, some of us have been urging these reductions for more than a decade. The reiterated response, however, has been that "the time is not right." The time will never be right unless there is the will to face up to this situation.

Even now, the time is right for a search for substantial savings in the cost of the European deployment. Events in Eastern Europe notwithstanding, possibilities of economy may well exist in streamlining the superstructures at the various U.S. headquarters in Europe. It is appropriate to ask, for example, whether they are not topheavy with high-ranking officers, staffs, and prerogatives, at the European Command at Stuttgart, the U.S. Air Force headquarters in Europe at Wiesbaden, the European communications headquarters at Zweibrucken, or the headquarters of the commander in chief, U.S. Naval Forces in London. Substantial cuts, long overdue, have already been made in U.S. civil establishments abroad on orders of retrenchment from President Johnson. It would be eminently desirable if the same orders might now be applied forthwith to the military entrenchments in Western Europe.

Had there been a timely reduction of forces in Western Europe, it would have already saved large sums of public money and contributed greatly to the strengthening of our international financial situation.

May I say that I do not see how timely reductions in our forces would have impaired the defense of Western Europe. Nor do I see—had they been made some time ago, as urged time and again—how they would have had any effect on the present situation in Czechoslovakia. Certainly, the presence of these forces, in full NATO complement, as they are now, has added nothing to our ability to respond to events in that nation. Indeed, we would do well to ask ourselves if, on August 21, we had had three times the number of men we now have in Western Europe or, for that matter, if we had had only one-third the number, what difference it would have made in our reactions to the developments in Czechoslovakia.

The fact is that NATO was formed to defend Western Europe and associated nations in the North Atlantic Treaty against attack. It was not designed to defend a Warsaw Pact nation against an attack from within that group. Though we may deplore the occupation of Czechoslovakia, the tragic event has not fallen—as it has developed to date—within the area of our shared military responsibility under NATO. Much less does it come within an area of unilateral U.S. responsibility.

On the subject of responsibility, I should like to emphasize, in closing, the importance which many Americans at-

tach to Western Europe's responsibility to increase its own defense efforts—relative to our own—in NATO. It is not helpful to the common undertaking when Western European defense budgets drop to levels disproportionate to our own, when the number of men in the uniforms of Allied nations decline, when the periods of conscription are shortened or abolished, and other evidence presents itself of a reluctance on the part of Europeans to make sacrifices for their own defense. It makes Senators who ask their constituents to pay higher taxes to cover increased defense costs and who vote the conscription of young Americans for terms of obligated service which are equaled in length among the NATO members only in Greece, Turkey, and Portugal—it makes us question policies that require these sacrifices of our people when others seem unwilling to make equivalent sacrifices for themselves.

I reiterate, therefore, that while events in Czechoslovakia may counsel a temporary wait-and-see with respect to the present level of the American NATO contingent and dependents in Europe, these events do not cancel the validity of the concept of phased reductions. The fact is that the invasion of Czechoslovakia has not changed, in any way, two basic elements in the proposal for such reductions which the Senate has had under consideration for some time.

First. This Nation has budgetary and balance-of-payments difficulties at a time when the Western European nations are more able than ever before to meet added costs of defense. Indeed, the West Germans have a balance-of-payments surplus of several billion dollars a year, a level so high that some West Germans describe it as "embarrassing."

Second. Our forces are in Europe for the defense of the NATO countries against the threat of military attack from the East. Yet, despite Czechoslovakia, there is little indication that the other NATO nations regard this threat as drastic enough to stimulate any significant increase in financial and other sacrifices for their own defense. Events in Eastern Europe notwithstanding, if the NATO countries are unwilling to make the sacrifices and our present financial plight is prolonged, pressures for a reduction of American forces in Europe may be expected to resume promptly—and properly so.

Mr. SYMINGTON. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. SYMINGTON. Mr. President, I congratulate the able majority leader, and agree without reservation to his statement this morning.

Recently a representative of the German Government called on us. The able majority leader has expressed my sentiments so well I shall send a copy of his address to that fine gentleman.

I hope our State Department realizes that there is a large and growing feeling in the Senate that concurs with these remarks just made; and hope also that our allies in Europe realize the respect we have and the American people have, for this Member of this body who knows so much about our foreign policy and who has just returned from Europe.

As one who was in the executive branch at the time of the creation of NATO and the formation of SHAPE, I watch with apprehension the lack of responsibility, apparently, of countries which now have a crisis in their own backyards. I hope they take to heart the wise observations of our majority leader this morning. This should be a joint defense in Europe, and one set up on a realistic basis; else it can only fail.

Mr. MANSFIELD. Mr. President, I wish to express my thanks to the senior Senator from Missouri who has been a leader in the fight, for more years than I care to remember, in trying to bring about a readjustment of policy vis-a-vis our relations with our European allies. The Senator has been an inspiration to us all in this matter.

Mr. DODD. Mr. President, the distinguished majority leader is always wise in his thoughts and I am always anxious to hear what he has to say. I look forward to reading his speech in the RECORD.

COMMITTEE MEETING DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR DODD

Mr. DODD. Mr. President, I ask unanimous consent that at the close of the morning business and when the Senate takes up the pending business I be recognized for such time as may be required.

Mr. JAVITS. Mr. President, reserving the right to object, and I shall not object, I wish to call the attention of the majority leader to this matter. We have before us a request for priority of recognition for as much time as the Senator requires.

Mr. MANSFIELD. Does the Senator from Connecticut ask to be recognized in the morning hour?

Mr. JAVITS. After the morning hour. The request blocks everybody from speaking, and the Senator could take 3 days.

Mr. DODD. I shall not be that long.

Mr. JAVITS. Will the Senator put a limit on the request?

Mr. DODD. I have no intention of preventing anyone from speaking.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Connecticut [Mr. DODD] be recognized immediately after the conclusion of routine morning business and after the pending business is laid before the Senate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JAVITS. I have a 15-minute speech in connection with the Fortas nomination. The Senator is acquainted with my problem. The Senator will accommodate me, will he not?

Mr. DODD. I shall. My interest is in expediting the pending business. I did not put a time limitation on my request for the purpose of prolonging anything.

INCOME TAX REFORM ESSENTIAL

Mr. YOUNG of Ohio. Mr. President, we Americans bear an extremely heavy income tax burden. Our Internal Revenue laws are unfair. There must be income tax reform. Laws should be simplified, tax loopholes closed, and special privileges to the ultrarich denied.

Last year, 37 Americans with incomes of more than a half million dollars paid no income taxes whatever on their stupendous incomes. They owned many millions of dollars worth of tax-free bonds and took advantage of every tax loophole available. In 1967 20 persons whose incomes exceeded $1 million each for that year paid no income taxes whatever for the previous year, nor for 1967. These superrich taxpayers claim charitable exemptions. Some create so-called charitable foundations. Unfortunately, we ordinary taxpayers must pay more as these ultrarich do not pay their fair share.

During recent years, extremely wealthy men and women purchase and operate "Gettysburg farms" and then claim tax losses from farming. This can be a device to cut down taxes on nonfarm income. Of course, the land values of their farms increase tremendously year after year, but our State and Federal Governments receive very little increased taxes for that.

Middle-class wage earners and many business and professional men bear the burden of almost intolerable taxes while those of great wealth buy tax-free bonds, or large farms which are really showplaces in many instances, or take advantage of various available tax loopholes.

Another tax loophole is the 27½-percent depletion allowance for oil and gas producing companies and the 23-percent depletion allowance for some 41 other minerals produced. The oil depletion allowance, in particular, has always appeared indefensible since the time in 1949 when I served on the Ways and Means Committee. I have, since that period, consistently voted to reduce it or abolish the allowance altogether. In 1967, five of the largest oil and gas producing corporations in the United States with net profits approximating $6 billion paid only 9 percent in taxes to our good Uncle Sam. This, due to the depletion allowance. This, at a time when individual Americans with modest earnings are shelling out at least one-fourth of their incomes in taxes, or having wages deducted to that extent.

Mr. President, it should be a most important duty of the 91st Congress convening next January to provide real and needed tax reform.

FORTAS-THORNBERRY AND THE AMERICAN BAR ASSOCIATION

Mr. GRIFFIN. Mr. President, although the Constitution provides that Supreme Court Justices are to be appointed "with the advice and consent of the Senate," strangly enough, it seems to be the opinion of many that the "advice and consent of the American Bar Association"—not the Senate—is all that should be required.

Apparently, we have arrived at a point where even some leaders of the bar refuse to recognize the Senate constitutional responsibility in the appointing process.

During the recent ABA convention in Philadelphia, Joseph A. Ball, president of the American College of Trial Lawyers, was quoted as follows:

> Let's repudiate those lunatics (in the Senate who questioned Justice Fortas) . . . they are not fit to tie Justice Fortas' shoes. (*Syracuse (N.Y.) Herald-American*, August 11, 1968).

Over and over again, a refrain is heard that the Senate should routinely confirm the pending Supreme Court nominations because, after all, the ABA has determined that the nominees are "qualified."

In view of all this, I believe it is necessary and appropriate for the Senate to take a close look at the role of the ABA and the procedures it has followed in passing judgment on the pending nominations.

Frankly, as one member of the ABA, I was shocked to learn—and I believe many of my 133,000 fellow members will be shocked to learn—about the way ABA approval came about in the case of the Fortas-Thornberry nominations.

First. It should be understood, first of all, that these nominations have never been approved by the ABA membership or by its governing body, the house of delegates. The only approval has come from the ABA's Committee on the Federal Judiciary.

Second. Most of the members of the 12-man ABA Committee on the Federal Judiciary had no knowledge whatsoever of the Fortas-Thornberry nominations until about 7 a.m. on the morning of June 26, the very day the President publicly announced his appointments.

Third. On that morning, the committee "met"—if that is the proper term—by means of a telephone conference call which lasted the better part of 1 hour. During this conference call the committee members were informed of the President's intention, and they were advised of investigative reports on the nominees.

Fourth. The investigation of Mr. Thornberry was conducted by Leon Jaworski, of Houston, Tex., a close associate for many years of President Johnson. Mr. Jaworski, although not a member of the committee, participated in the conference call meeting.

Fifth. Since that time, Mr. Jaworski has been quoted as saying he was asked to investigate Judge Thornberry "because I knew him better than the others."

Sixth. Although it has been reported that committee approval was unanimous, I am advised that at least one member of the committee had no knowledge whatsoever of the conference call and took no part in any vote on the nominees.

In view of such circumstances, I wonder what weight the members of the U.S. Senate are expected to assign to the oft-cited approval by the American Bar Association of the Fortas-Thornberry nominations.

After all, we are not picking an all-America backfield or deciding whether Mickey Mantle should be on the all-star team. As U.S. Senators, we are called upon to exercise a constitutional responsibility which affects the whole fabric of American society for generations to come.

What weight should be given to the recommendations of Mr. Jaworski? According to the New York Times of August 3, 1968, Mr. Jaworski is "a former attorney for President Johnson, who has been associated with Mr. Johnson for years."[1] Could he reasonably have been expected to report unfavorably on a Presidential selection under such circumstances?

Why was the ABA committee given so little time in which to consider such important nominations? As I understand it, the committee generally takes much more time—often a week—to consider nominations to lower court positions.

Of course, it is not the function of Congress to effect reforms in the procedures of a private professional organization. But the Senate should take note of such procedures as well as the fact that widespread misunderstanding seems to have grown up concerning the role of the ABA in such matters.

In fairness, I should emphasize that the ABA committee on the Federal judiciary has acknowledged limitations on its role. For example, letters from the chairman of the committee, Albert E. Jenner, to Senator EASTLAND—see pages 1, 69 of the hearings on nominations of Fortas and Thornberry—transmitting the committee's recommendation with respect to Messrs. Fortas and Thornberry contain this statement:

> Our responsibility is to express our opinion *only on the question of professional qualifications* which includes, of course, consideration of age and health, and of such matters as temperament, integrity, trial and other experience, education and demonstrated legal ability. *It is our practice to express no opinion at any time with regard to any other consideration not related to such professional qualifications which may properly be considered by the appointing or confirming authority.*

Clearly, in its own letters, the ABA committee recognizes that the confirming authority—the Senate—may properly take into account other considerations not related to professional qualifications.

Under the circumstances, it is difficult to understand why some ABA leaders criticize the Senate when it sees fit to exercise its constitutional responsibility by looking at matters outside the mere professional qualifications of a nominee.

Of course, even in the limited area to which ABA approval is applicable, there is no obligation on the part of the Senate to substitute ABA judgment for its own. Indeed, for the Senate to follow such a course would be an abdication of its constitutional responsibility.

And, of course, it is nonsensical to suggest—as some have suggested—that ABA approval of a nominee should somehow preclude all further Senate inquiry, even as to matters admittedly not covered by the ABA.

In order to determine the weight to be accorded the ABA approval in the Fortas-Thornberry case, the Senate should know what matters were, in fact, considered by the ABA's committee during its hour-long telephone meeting. Is a transcript of that discussion available to the Senate? To what extent, if at all, did the committee concern itself with Mr. Fortas' role as an advisor to the President while sitting as a Justice of the Supreme Court? Were the opinions of Judge Thornberry, including the decision in University Committee against Lester Gunn, carefully reviewed by the committee during that hour?

As a member of the ABA, I have been interested to find that a significant number of other members share my concern about the inadequacy of present ABA procedures—particularly in light of the role in judicial selection claimed for the ABA by some of its leaders.

During the course of this controversy, some members have been surprised to learn that the ABA does not pass on whether a nominee is among the best qualified for a judicial post, but merely determines whether the nominee meets a minimum standard of professional qualification.

Some do not believe it is right for a 12-member committee to purport to speak on such matters for the 133,000 members of the American Bar Association.

During the recent convention in Philadelphia two resolutions calling for reforms in this area were submitted to the ABA assembly. Although action has not been taken, the mere introduction of such resolutions was read by many as a significant sign

Furthermore, I am aware that several members of the ABA's Committee on the Federal Judiciary were very much disturbed because they were expected on the morning of June 26 to give such hasty rubber-stamp approval to the Fortas-Thornberry nominations. Because the time allowed for such consideration was so short and because the political character of these and other Supreme Court nominations has been so apparent, I understand that members of this ABA committee came close at Philadelphia to recommending that the ABA abandon altogether its role with respect to appointments to the Supreme Court.

Mr. President, while I am critical of certain procedures which have been followed by one ABA committee in this particular situation, my remarks today should not be interpreted as blanket criticism of the ABA or of all its officers. Indeed, I am proud of my membership in this great association which has generally advanced the legitimate interests of the legal profession in many commendable ways

Nevertheless, on this occasion, I am convinced that there is need to reestablish and maintain a proper perspective concerning the appropriate roles of the U.S. Senate and the ABA in the appointing process.

Mr. President, I ask unanimous consent that an article from the New York Times of August 3, 1968, an article from the Los Angeles Times of August 3, 1968,

[1] For example, in 1960 a suit was brought in Texas challenging the right of Mr. Johnson to run for Vice President and Senator at the same time. Lawyers defending Mr. Johnson's position included Jaworski and Fortas.